



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: JULY 28, 2011

Date: July 21, 2011
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Subject: **Informational Presentation on the Status of Formula Retail Controls**

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BACKGROUND

Overview. In 2004, the Board of Supervisors adopted San Francisco's first Formula Retail Use controls. This Ordinance established a definition; prohibited Formula Retail in one district; required Conditional Use Authorization in another; and established notification requirements in all neighborhood commercial (NC) districts. Since 2004, the Planning Code has been amended to expand Formula Retail Use controls, notably voters approved a ballot initiative in 2007 that formed the base for most of the City's current controls.

Proposition G. In 2007, San Francisco voters approved Proposition G which required any "formula retail use" desiring to locate in any NC district to obtain Conditional Use Authorization. Prior to 2007, Formula Retail uses in NC Districts required 312 Neighborhood Notification; formula retail was either principally permitted, required Conditional Use Authorization or was not permitted, such as in the Hayes-Gough and North Beach NCDs.

Detailed History. In 2004, the Board of Supervisors adopted San Francisco's first Formula Retail Use controls (Ord. 62-04) under Planning Code Section 703.3 (Formula Retail Uses). These controls established a definition of "Formula Retail Use", prohibited these uses within the Hayes-Gough Neighborhood Commercial (NC) Zoning District, required Conditional Use Authorization for these uses within Cole Valley, and required neighborhood notification pursuant to Planning Code Section 312 for these uses in all other NC Zoning Districts. In 2005, Section 703.3 was amended to prohibit Formula Retail Uses within the North Beach NCD (Ord. 65-05) and require Conditional Use Authorizations for these uses on Divisadero Street between Haight and Turk Streets (Ord. 173-05). In 2006, Section 703.3 was amended to require Conditional Use Authorizations for Formula Retail Uses within the Japantown Special Use District (SUD) (Ord. 180-06) and Section 803.6 was added to require Conditional Use Authorizations for these uses within the Western SoMa Planning Area SUD (Ord. 204-06). In 2007, San Francisco voters approved Proposition G, which added Section 703.4 and required Conditional Use Authorization for all Formula Retail Uses as defined in Section 703.3. In 2008, Section 803.6 was amended to prohibit Formula Retail Uses within the Chinatown Visitor Retail Zoning District and require Conditional Use Authorization for these uses within the Chinatown Community Business and Residential Neighborhood Zoning Districts (Ord. 269-08) and the Mixed Use – General (MUG) and Urban Mixed Use (UMU) Zoning Districts (Ord. 298-08). In 2011, the Planning Code was amended to extend Formula Retail Use Controls, including Conditional Use Authorization requirements, to the RC-3, RC-4, RH, RM, RTO, and RED Zoning Districts (Ord. 63-11).

CURRENT CONTROLS

Definition. Planning Code Section 703.3(b) defines a Formula Retail Use as:

“a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.”

Use Types Subject to Formula Retail Controls. The Formula Retail Use controls of Section 703.3(c) apply to a finite group of uses, including: "Bar," "Drive-Up Facility," "Eating and Drinking Use," "Liquor Store," "Restaurant, Large Fast-Food," "Restaurant, Small Self-Service," "Restaurant, Full-Service," "Sales and Service, Other Retail," "Sales and Service, Retail," "Movie Theatre," "Video Store," "Amusement and Game Arcade," "Take-Out Food," and "Specialty Food, Self-Service." Formula Retail Use controls do *not* apply to uses that are not specifically listed above, including: "Personal Service," "Financial Service," or "Medical Service".

Authorization Process. Depending on the location of the Formula Retail Use, it may be either prohibited, permitted or permitted by Conditional Use Authorization.

1. Formula Retail is prohibited in the Hayes-Gough Neighborhood Commercial District and the North Beach Neighborhood Commercial District, and formula retail full-service restaurants, large fast food restaurants, small self-service restaurants or self-service specialty food stores are prohibited in the Upper Fillmore Neighborhood Commercial District. Pending legislation [BF 110592 Inner, Outer Clement and Geary NC Controls] would prohibit formula retail eating and drinking establishments and formula retail pet supply stores, if adopted by the Board of Supervisors.
2. Formula Retail Uses are permitted and do not require special notification nor a public hearing in the Potrero Center Special Use District.
3. Conditional Use Authorization is required in all other districts where formula retail controls apply. Districts which require Conditional Use authorization include Neighborhood Commercial (except where prohibited as described above); the Urban Mixed Use (except where permitted in the Potrero Center SUD as described above); Mixed Use-General; Residential Transit-Oriented; Chinatown Visitor Retail; and the Residential Commercial districts; and the Japantown and Western SoMa Special Use Districts. In these districts Conditional Use authorization is required even if the proposed Formula Retail use is would occupy a space that is currently occupied by a Formula Retail use.

When hearing a CU for Formula Retail the Commission is required to consider the following criteria in addition to the standard CU criteria:

- The existing concentrations of formula retail uses within the Neighborhood Commercial District.
- The availability of other similar retail uses within the Neighborhood Commercial District.
- The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.
- The existing retail vacancy rates within the Neighborhood Commercial District.
- The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

ISSUES

Formula Retail continues to be a contentious issue in many of San Francisco's NC Districts, particularly with pet food and supply stores, such as Pet Food Express and Unleashed by PETCO, and national restaurant chains like Subway and Starbucks Coffee. Recently, there have also been concerns about the proliferation of branch banks ("Financial Service"), which are not subject to the Formula Retail Use controls. While Financial Services are listed as a distinct use category in each NC Zoning District, with use controls tailored to each District (i.e. prohibited, permitted and permitted by Conditional Use Authorization), concerns have been raised that these uses have similar impacts to Formula Retail Uses and should be subject to these controls, including Conditional Use Authorization.

It should be noted that while the Commission is required to consider the criteria listed above, the interpretation of how to apply these criteria has varied. At times arguments have been made that a district with a few existing Formula Retail Uses should be considered as a neighborhood where new Formula Retail Uses would be acceptable whereas others will review the same information and conclude that the neighborhood is "over-saturated" and therefore no more Formula Retail should be allowed. Similarly, if a district has no Formula Retail uses, it could be interpreted that the addition of one such use would have a de minimis impact on the district OR it could be interpreted that the district is one that should have no Formula Retail uses. While the varied interpretations create a lack of certainty, the lack of a rigid definition also allows the Commission to weigh each case on its merits and utilize discretion.

APPEALS TO THE BOARD OF SUPERVISORS

Since 2007, the Board of Supervisors has heard at least three appeals of Formula Retail Conditional Use authorizations. Specifically, the cases were resolved as follows:

- 1575 South Van Ness Avenue dba "ICI Paints": The Board of Supervisors modified but upheld CU.
- 3150 California St dba "Pet Food Express": The Board of Supervisors failed to either uphold or overturn the CU. Therefore, the Commission's authorization stood.
- 4041 Geary Blvd dba "Starbucks": The Board of Supervisors disapproved the CU.

SUMMARY OF CASES (NOT INCLUDING ACTIVE CASES)

Of the cases that have been filed and resolved since November of 2007 there have been approximately 31 Formula Retail Conditional Use cases. Of those 6 have been withdrawn, 3 have been disapproved, 22 have been approved. Not including currently active cases,

- 29% of all Formula Retail Conditional Use applications have been either withdrawn or disapproved by the Commission and
- 71% of all Conditional Use applications have been approved by the Planning Commission since November 2007.

SUMMARY OF ALL CASES (INCLUDING SIX ACTIVE CASES)

Of all the cases that have been filed since November of 2007 and including those that are currently pending, there have been approximately 37 Formula Retail Conditional Use applications filed with the Department.

All Applications for Conditional Use Authorization of Formula Retail Filed On or After 11/7/2007

